57. (New) The access port device according to claim 45, wherein the access site is oriented substantially perpendicular to the outlet.

58. (New) The access port device according to claim 45, wherein both the guidewire entry site and the access site are configured to allow access to the reservoir through the self-sealing septum.

59. (New) The access port device according to claim 45, wherein the upper body comprises at least one suture hole configured to permit the access port device to be sutured inside the body of a patient.--

## REMARKS

Applicants have cancelled claim 10 to advance prosecution, rewritten claim 11 in independent form, and amended claims 11, 12 and 45 to recite an access port device "to be implanted in a patient's body." Applicants have also added new claims 48-59. In addition, Applicants have amended claims 11 and 45 to correct minor errors, and the correction of those errors does not alter the original claim scope.

Currently claims 11, 12, 45-59 are pending in this application. Newly added claims 48-59 are directed to elected species II.

In the Office Action, claims 10-12 and 45-47 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,000,740 ("Mittleman") and claim 10 was also rejected under 35 U.S.C. § 102(b) as being clearly anticipated by U.S. Patent No. 5,108,377 ("Cone et al.").

As mentioned above, Applicants have cancelled claim 10, thereby obviating the Section 102 rejections applied to that claim.

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On page 2 of the Office Action, the Examiner alleged that Mittleman discloses "an access port including upper and lower 12 body portions, a guidewire entry site 16 sealed with a septum 26, and an access site 42." Applicant's respectfully disagree with this construction of Mittleman.

Mittleman discloses an injection site 10 having a main body portion 12, first and second inlets 14, 16, and a diaphragm 26. As discussed in the Background of the Invention section of Mittleman, injection sites are commonly used in a hospital setting when it is desired to combine a medicament with a parental fluid (e.g., I.V. fluid) being fed to a patient intravenously. Col. 1, lines 7-11. Such devices are always positioned along tubing placed between the parental fluid source and the delivery device (e.g., needle) inserted in the patient without ever being implanted in the patient. Accordingly, the injection site 10 cannot be considered an "access port device to be implanted in a patient's body", as recited in claims 11, 12, and 45, as amended.

As described, for example, in the Background of Invention section of the present application, the term "access port" has an art-recognized meaning. In general, an "access port" is a device that is **implanted** into a patient. When the access port is implanted into the patient, for example, a needle, specially designed cannula, or other device can be passed through a self-sealing septum associated with the access port so that fluids can be easily introduced into and/or removed from a remote site in a patient. Such an implantable arrangement is particularly useful when a patient requires frequent insertion and/or removal of fluids.

Although the Examiner is permitted to give claims there broadest reasonable interpretation, M.P.E.P. § 2111 requires that such an interpretation must be "**consistent**

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**with the specification**" (emphasis supplied). Further, this section of the M.P.E.P. specifies that "[t]he broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach." Id. (citing In re Cortright, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999)). After considering the specification, one skilled in the art would consider the recited "access port device" as being a device that is configured to be implanted into a patient's body. With such an art-recognized interpretation of the access port device, one of ordinary skill in the art would readily appreciate that the injection site 10 disclosed in Mittleman is not an access port device. Therefore Mittleman does not anticipate or suggest the subject matter in amended claims 11, 12, and 45.

Applicant respectfully requests the reconsideration of this application, withdrawal of the claim rejections, and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Application Number: 09/690,473
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## APPENDIX TO AMENDMENT

### Version with Markings to Show Changes Made

Amendments to the Claims

11. (Amended) An access port device to be implanted in a patient's body, the access port device comprising:

a body portion having an upper body, a lower body attachable to the upper body, and a self-sealing septum between the upper and lower bodies;

an outlet for fixedly attaching a catheter to the body portion; and

a guidewire entry site disposed in the upper body for inserting a guidewire into the septum and into said outlet, the guidewire entry site being disposed opposite the outlet,

[The access port according to claim 10,] wherein a reservoir is formed between the self-sealing [access] septum and the lower body and the said catheter is in flow communication with the reservoir through said outlet.

12. (Twice Amended) An access port device to be implanted in a patient's body, the access port device comprising:

a body portion having an upper body, a lower body attachable to the upper body, and a self-sealing septum between the upper and lower bodies;

an outlet for fixedly attaching a catheter to the body portion; and

a guidewire entry site disposed in the upper body for inserting a guidewire into the septum and into said outlet,

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wherein the upper body has an access site disposed therein.

45. (Amended) An access port device to be implanted in a patient's body, the access port device comprising:

an upper body portion having a guidewire entry site and an access site;

a lower body portion;

a self-sealing septum arranged between the upper body portion and the lower body portion; and

a reservoir defined by the lower body portion and the self-sealing septum, wherein both the [guidwire] guidewire entry site and access site are configured to allow access to the reservoir.

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